

(2016) 02 KL CK 0113
In the High Court Of Kerala
Case No : W.P. (C) No. 22844 of 2013 (E)

Kanjiramkulam Service Co-operative Bank Ltd.

APPELLANT

Vs

Lally Varghese

RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 100, Section 2 (1), Section 2 (i), Section 2(i), Section 69, Section 69(1), Section 69(1)(h), Section 80, Section 80(2), Section 80(3)

Citation : (2016) LIC 3077 : (2016) 1 LLN 719

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : G.S. Reghunath, K. Rajesh Kannan, A.S. Shammy Raj and P. Shanes, Advocates, for the Appellant; George Poonthottam, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dama Seshadri Naidu, J.—1. Heard the learned counsel on both sides, apart from perusing the record.

2. The Petitioner-Bank initiated disciplinary proceedings and eventually removed the respondent from service. Aggrieved, the respondent filed ARC No. 32 of 2009. The Bank, in turn, filed this writ petition questioning the maintainability of the arbitration case on the ground that only the Industrial Tribunal has the necessary jurisdiction. The petitioner, in fact, has also taken the plea of res judicata contending that earlier the respondent filed ARC No. 37 of 2006 questioning the initiation of the very disciplinary proceedings, but had the ARC dismissed. The learned counsel has, however, submitted that the petitioner has given up the said plea.

3. In support of his contentions that the arbitration proceedings are not maintainable concerning any service disputes and that it is only the Industrial Tribunal that has the jurisdiction, the learned counsel has placed reliance on *Kaloor Vadakkummury Service Cooperative Society Ltd., v. Assistant Registrar,*

Mukundapuram & others , 1973 KLT 523, A.P. Sankara Wariyar v. The North Malabar Dist. Cooperative Supply & Marketing Society Ltd., Calicut and another , 1982 KLJ 124, K.T. Mathew v. Registrar of Co-operative Societies & others , 1995 (1) KLJ 728 and Trivandrum Co-Operative Urban Bank Ltd. v. Joint Registrar of Cooperative Societies 2001 (1) KLT 99.

4. The learned counsel for the respondent, on the other hand, has strenuously contended that Section 69 of the Kerala Co-operative Societies Act ("the Act") underwent an amendment in 2003. And resultantly the Arbitration Court came into existence with plenary powers to adjudicate upon all the issues of Co-operative Societies, including the service disputes. In this regard, the learned counsel has drawn my attention to a decision of this Court in Chirayinkeezhu Service Co-operative Bank Ltd. v. Santhosh , 2015(4) KLT 163 (L.B), rendered by a larger Bench.

5. Since the issue involves a pure question of law, I am not referring to the facts of the case. Suffice it to say that the learned Larger Bench in Santhosh (supra) has definitively declared that ever since the date of the amendment to Section 69 of the Kerala Cooperative Societies Act, it is the Arbitration Court that has been vested with all powers vis-?-vis the employees of the Co-operative Societies, including their service disputes.

6. Certain Co-operative Societies challenged the proceedings initiated by the Labour Court in the exercise of its powers under the Industrial Disputes Act, 1947, concerning the service disputes in the Societies. Initially, in Thodupuzha Taluk General Marketing Cooperative Society v. Michael Sebastian [, 2010 (1) K.L.T. 938] a learned Division Bench took the view that the jurisdiction of the Arbitration Court under the Kerala Co-operative Societies Act and that of the Industrial Tribunal/the Labour Court under the Industrial Disputes Act were concurrent. In the course of time, this view had come to be doubted by another coequal Bench, which referred the matter to a learned Full Bench.

7. The Three-Judge Bench, on reference, has noticed that there were two earlier Full Bench judgments of this Court which considered the issue. It has, therefore, referred the matter to a learned Larger Bench for laying down the law in respect of the said issue. That is how the dictum in Santhosh (supra) has come to be laid down.

8. The learned Larger Bench has posed unto itself the question whether the provisions of Section 69 of the 1969 Act exclude the jurisdiction of the Labour Court under the Industrial Disputes Act, 1947. Per majority, it has, among other thing, observed that as per Section 80 of the 1969 Act, the word "establishment" encompasses the officers and employees of the Co-operative Societies. Section 80(2) of the Act makes a specific reference to the number and designation of the officers and servants of different classes of Co-operative Societies. Thus, the officers and servants of the Society, according to their Lordships, are a part of the establishment as per the statutory scheme of the 1969 Act. Section 80(3) of

the Act further provides that the Government shall make Rules regulating the qualification, remuneration, allowances, and other conditions of service of the officers and other servants of the different classes of Societies. Thus, the statute also contemplates making of rules regulating the conditions of service of officers and servants who are part of the establishment.

9. Continuing in the same vein, the learned Larger Bench has held that when the officers and servants are part of the establishment, and the Statute provides for Rules regulating their conditions of service, it can be safely concluded that disputes touching the establishment, i.e., the officers and other servants of the society, squarely fall within the adjudicatory ambit of the same statute.

10. The learned Larger Bench has found an additional indication in Section 69(1) of the 1969 Act itself that the settlement of any dispute as referred to under the said provision, read with Section 2 (i) of the Act, shall not be dealt with by any other Court. Section 100 of the Act bars the jurisdiction of courts mandating that "no civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in the Act." But, while enacting Section 69(1) of the Act, the Legislature has used the expression "no Court"; it is thus a clear pointer to the exclusion of the jurisdiction of all Courts. The statutory scheme does, therefore, indicate that the jurisdiction of the Labour Court under the Industrial Disputes Act, 1947, to take cognizance of disputes concerning the employees or workmen in the Co-operative Society was excluded. Their Lordships have, thus, held that Section 69(1) does not admit of any exception regarding the jurisdiction of the forum provided under Section 69 of the Act.

11. The majority in *Santhosh* (supra) has found one more reason for not accepting the submission of the respondents that service disputes of officers and other employees cannot be entertained under Section 69 of the 1969 Act. It has found a dichotomy in their submissions that the definition in Section 2 (1) covers service disputes of only the officers of a Co-operative Society, but not those of other employees. In this regard, their Lordships have observed that the statutory scheme of the 1969 Act does not admit of any classification concerning the service disputes relating to the officers on one hand and the other employees on the other. It is felt inadvisable to read a provision in such a manner as to exclude the service disputes of one section of the employees from the purview of Section 69 of the Act, but include those of another section-officers.

12. On the converse, if it were to be concluded that the service disputes of the employees and Officers could not be adjudicated upon under Section 69, there would be no forum available for them, given the fact that the jurisdiction of the civil court has already been excluded.

13. Finally, the learned Larger Bench has concluded that Section 69, as originally enacted, read with Section 2(i) of the Act, gives a clear indication that service disputes of Officers and employees shall be referred to under Section 69 of the 1969 Act to the Registrar notwithstanding anything contrary to any other law for

the time being. Section 69 begins with a non-obstante clause; there was a further injunction in Section 69(1)(h) that no other court or other authority shall have jurisdiction to entertain any suit or other proceedings. According to their Lordships, in these circumstances, Section 69 of the 1969 Act clearly overrides the contrary provisions of 1947 Act.

14. The conclusion, therefore, is to the effect that when in the Act, as originally enacted, Section 69 itself has excluded the jurisdiction of the Labour Courts under the 1947 Act, there was, then, no necessity for obtaining Presidential assent for Amendment Act 1 of 2000. Jurisdiction of the Labour Court having already been excluded by Section 69, Amendment Act 1 of 2000 does not impinge upon the 1947 Act. Nor can the said amendment be said to be void and inoperative in reference to the provisions of the 1947 Act, declares the learned Larger Bench.

In the light of the above definitive declaration of law by a learned Larger of this Court, I cannot but hold that the jurisdictional objection raised by the petitioner cannot be sustained. As a result, the writ petition is dismissed. No order as to costs.